

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-132

**CASPAR W. WEINBERGER, SECRETARY OF HEALTH,
EDUCATION, AND WELFARE, APPELLANT**

v.

JEAN GLODGETT, ET AL.

***ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF VERMONT***

SUPPLEMENTAL BRIEF FOR THE APPELLANT

During oral argument in the above cases on March 24 and 25, 1975, the question was raised whether an appeal from an order of a three-judge district court granting an injunction on non-constitutional grounds lies to this Court rather than to the court of appeals. The Court authorized the parties to file supplemental briefs on this issue. We conclude that appeal in such cases should lie to the court of appeals, and that the judgment of the district court should be vacated and the cases remanded to that court for entry of a fresh decree to permit appeals to the Court of Appeals for the Second Circuit.

Section 1253 of Title 28 provides for a direct appeal to this Court from an order granting or denying an interlocutory or permanent injunction in any civil action required to be "heard and determined" by a three-judge district court. Sections 2281 and 2282 of Title 28

provide that only a three-judge district court may enjoin the enforcement, operation or execution of a federal or state statute as unconstitutional. Although the latter provisions literally require a three-judge court only where an injunction is granted, this Court had held that where a three-judge court was properly convened, an appeal from its final judgment lies only to this Court without regard to the basis upon which the three-judge court decided the case. See, e.g., *Brotherhood of Engineers v. Chicago, R.I. & P.R. Co.*, 382 U.S. 423; *Florida Lime & Avocado Growers v. Jacobsen*, 362 U.S. 73; see also *Hagans v. Lavine*, 415 U.S. 528, 543 (dictum).

Two recent decisions of this Court, however, have modified this principle. *Gonzalez v. Employees Credit Union*, 73-858, decided December 10, 1974, held that an order of a three-judge district court dismissing, because of plaintiffs lack of standing, a complaint seeking to enjoin a state statute as unconstitutional, is not directly appealable to this Court. The Court held that "when a three-judge court denies a plaintiff injunctive relief on grounds which, if sound, would have justified dissolution of the court as to that plaintiff, or a refusal to request the convention of a three-judge court *ab initio*, review of the denial is available only in the Court of Appeals" (slip op. 11). The Court pointed out (*id.* at 8) that the purpose of "the three-judge court apparatus * * * [is] to save state and federal statutes from improvident doom, on constitutional grounds, at the hands of a single federal district judge"; and that "only a narrow construction" of "[t]he words of §1253 governing this Court's appellate jurisdiction over orders denying injunctions * * * is consonant with the overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interests of sound

judicial administration" (footnote omitted). The Court stated (*ibid.*, emphasis in original): "Whether this jurisdiction be read broadly or narrowly, there will be no impact on the underlying congressional policy of ensuring this Court's swift review of three-judge court orders that *grant* injunctions."

In *Gonzalez* the Court left open the question whether Section 1253 "should be read to limit our direct review of three-judge court orders denying injunctions of those that rest upon resolution of the constitutional merits of the case" (slip op. 9). In *MTM, Inc. v. Baxley*, 73-1119, decided March 25, 1975, the Court resolved that question affirmatively. It pointed out (slip op. 5) that

* * * the congressional policy behind the three-judge court and direct review apparatus—the saving of state and federal statutes from improvident doom at the hands of a single judge—will not be impaired by a narrow construction of §1253. A broad construction of the statute, on the other hand, would be at odds with the historic congressional policy of minimizing the mandatory docket of this Court in the interest of sound judicial administration. * * *

"In light of these factors" the Court concluded that "a direct appeal will lie to this Court under §1253 from the order of a three-judge federal court denying interlocutory or permanent injunctive relief only where such order rests upon resolution of the merits of the constitutional claim presented below" (*id.* at 5-6).

We submit that the same factors also lead to the conclusion that direct appeal from an order of a three-judge district court granting an injunction lies to this Court only where that order rests on constitutional grounds. There is nothing in the language of Section 1253 that warrants a distinction between orders denying and

orders granting injunctions. Furthermore, "the interest of sound judicial administration" (*id.* at 5) similarly dictates against direct appeal to this Court from orders granting injunctions on non-constitutional grounds.

If the plaintiffs in the present case had raised no constitutional issues but only the statutory questions that the district court decided, a single judge would have decided them, and his decision would have been appealable only to the court of appeals. In terms of the underlying policy of Section 1253—avoiding invalidation of federal and state statutes by a single federal district judge on "constitutional grounds" (*Gonzalez, supra*, slip op. at 8) and "minimizing the mandatory docket of this Court" (*ibid.*)—there is no greater reason why appeals from district court orders granting injunctions should go directly to this Court than appeals from such orders denying injunctions, which were held appealable only to the courts of appeals in *MTM*. The reference in *Gonzalez* to the "underlying congressional policy of ensuring this Court's swift review of three-judge court orders that *grant* injunctions" (*ibid.*, emphasis in original) should be interpreted, in light of the Court's statement in that case that the purpose of the "three-judge court apparatus" is to prevent a single federal district judgment from invalidating state and federal statutes "on constitutional grounds" (*ibid.*), to refer to such orders granting injunctions on constitutional grounds.

"[I]n the area of statutory three-judge court law the doctrine of *stare decisis* has historically been accorded considerably less than its usual weight," and "in struggling to make workable sense" of these "awkwardly drafted" "procedural statutes," "the Court has not infrequently been induced to retrace its steps." *Gonzalez, supra* (slip op. 5-6, footnote omitted). It would be con-

sistent with the congressional purposes of these statutes and the Court's treatment of them for it now to hold that orders of three-judge district courts granting injunctions on non-constitutional grounds, like such orders denying injunctions on those grounds, should be reviewed by the courts of appeals and not directly by this Court.

If the Court agrees with this submission, the judgment of the district court should be vacated and the cases remanded to that court for entry of a fresh decree to permit an appeal to the court of appeals, as was done in *Gonzalez* (slip op. 11-12) and *MTM* (slip op. 6).

Respectfully submitted.

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APRIL 1975.

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PHILBROOK, COMMISSIONER, DEPARTMENT
OF SOCIAL WELFARE *v.* GLODGETT ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

No. 73-1820. Argued March 24-25, 1975—Decided June 9, 1975*

Under the Aid to Families with Dependent Children (AFDC) program of the Social Security Act (Act), the term "dependent child" was expanded to include children whose deprivation was caused by a parent's unemployment. Section 407 (b) (2) (C) (ii) of the Act, as amended in 1968, makes this expanded definition applicable only if a state plan under the AFDC program denies aid to a dependent child so defined "with respect to any week for which such child's father receives unemployment compensation." Vermont, to qualify for federal funding under this unemployed-father program, promulgated a regulation under its participating Aid to Needy Families with Children (ANFC) program defining an "unemployed father" as one who is, *inter alia*, out of work, provided "[h]e is not receiving Unemployment Compensation during the same week as assistance is granted." Appellees, who are parents and children of Vermont families whose ANFC assistance was terminated or denied because the fathers were receiving unemployment compensation, filed suit against appellant Commissioner of the Vermont Department of Social Services and appellant Secretary of Health, Education, and Welfare to enjoin enforcement of the federal statute and state regulation. Holding that it had jurisdiction over the parties under 28 U. S. C. § 1343 (3), and construing § 407 (b) (2) (C) (ii) as making actual payment of, rather than mere eligibility for, unemployment compensation the disqualifying factor for AFDC benefits, a three-judge

*Together with No. 74-132, *Weinberger, Secretary of Health, Education, and Welfare v. Glodgett et al.*, also on appeal to the same court.

Syllabus

District Court held that the Vermont regulation could not be applied so as to conflict with this construction of the federal statute, and entered an injunction to this effect. *Held*:

1. The Vermont regulation, as applied to exclude unemployed fathers who are merely eligible for unemployment compensation from receiving ANFC benefits, impermissibly conflicts with § 407 (b)(2)(C)(ii), as correctly interpreted by the District Court. As evidenced by that provision's legislative history, Congress did not intend the provision's coverage to be at the State's discretion once it elected to participate. Pp. 6-12.

2. This Court will not inquire into the question whether the District Court had jurisdiction over appellant Secretary but will make an exception to the general rule that this Court has a duty to so inquire, where the question has been inadequately briefed, the substantive issue has been decided in the State's case, and the Secretary has stated he will comply with the District Court decision on the statutory issue if it is affirmed. The exercise of the District Court's jurisdiction over the Secretary has resulted in no adjudication on the merits that could not have been just as properly made without the Secretary, and in no issuance of process against the Secretary which he has properly contended to be wrongful before this Court. Pp. 12-15.

386 F. Supp. 211, No. 73-1820, affirmed; No. 74-132, dismissed.

REHNQUIST, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 73-1820 AND 74-132

Paul R. Philbrook, Etc.

Appellant,

73-1820

v.

Jean Glodgett et al.

Caspar W. Weinberger, Secretary of Health, Education, and Welfare, Appellant,

74-132

v.

Jean Glodgett et al.

On Appeals from the United States District Court for the District of Vermont.

[June 9, 1975]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In these consolidated appeals we are called upon to construe a provision of the Social Security Act of 1935 (Act), as amended, and to ascertain whether a Vermont welfare regulation impermissibly conflicts with that provision. A three-judge District Court held that it did, 368 F. Supp. 211 (Vt. 1973), and we noted probable jurisdiction in the appeal of appellant Philbrook, Commissioner of the Vermont Department of Social Services, in No. 73-1820, and postponed consideration of the question of jurisdiction in the appeal of appellant Weinberger, Secretary of the Department of Health, Education, and Welfare, in No. 74-132. 419 U. S. 963 (1973). Philbrook's appeal presents only the question of whether the Vermont welfare regulation in question conflicts with § 407 (b)(2)(C)(ii) of the Act, as amended, 42 U. S. C.

§ 607 (b)(2)(C)(ii), while the Secretary's appeal presents the additional issue of whether the District Court correctly concluded that it had jurisdiction over the Secretary under the doctrine of pendent jurisdiction.

I

In Title IV of the Social Security Act of 1935, 49 Stat. 627, Congress enacted the Aid to Dependent Children program,¹ through which federal funds would be granted to qualifying States in order to provide aid to dependent children. The term "dependent child" was originally defined to include only children whose deprivation was caused by "the death, continued absence from the home, or physical or mental capacity of a parent,"² but in 1961 Congress expanded the definition of dependent child to include children whose deprivation was caused by the unemployment of a parent.³ This program was enacted on an experimental basis⁴ and gave States the authority to define "unemployment" and to deny AFDC benefits in whole or in part if the unemployed parent received unemployment compensation during the relevant period. In 1968 Congress elected to make the

¹ The name of the program was changed in 1962 to "Aid and Services to Needy Families with Children," and the name of the assistance provided thereunder became "Aid to Families with Dependent Children," (AFDC). Pub. L. 87-543, 76 Stat. 185. Vermont has elected to call its participating program Aid to Needy Families with Children (ANFC).

² Section 406 (a) of the Act, 49 Stat. 629. See generally *Burns v. Alcalá*, 420 U. S. — (1975).

³ 75 Stat. 75. See 1961 Public Papers of the Presidents of the United States 46-47; H. R. Rep. No. 28, 87th Cong., 1st Sess. (1961); S. Rep. No. 165, 87th Cong., 1st Sess. (1961); H. Conf. Rep. No. 307, 87 Cong., 1st Sess. (1961).

⁴ The 1961 legislation was scheduled to expire on June 30, 1962, but it was extended for a five-year period in 1962, 76 Stat. 193, and for one more year in 1967, 81 Stat. 94.

unemployed parent program permanent,⁵ but in response to problems that had arisen during the trial period, Congress retracted some of the authority that had formerly been delegated to the States.⁶ Under these and other changes that also became effective in 1968,⁷ the expanded

⁵ 81 Stat. 882. H. R. Rep. No. 544, 90th Cong., 1st Sess., 17, 107-109, 175-176 (1967); S. Rep. No. 744, 90th Cong., 1st Sess. (1967); H. Conf. Rep. No. 1030, 90th Cong., 1st Sess (1967).

⁶ Under the 1961 legislation, the States had adopted such varying definitions of "unemployment" that uniform administration of the program became impossible; in some instances the States had adopted such a broad definition as to have "gone beyond anything that the Congress originally envisioned." H. R. Rep. No. 544, *supra*, at 108. See Statement of Wilbur J. Cohen, Undersecretary of the Department of Health, Education, and Welfare, Hearings on H. R. 12080, Before the Senate Comm. on Finance, 90th Cong., 1st Sess., 268-269 (1967). Congress responded by enacting a federal definition of "unemployment" which required States to include fathers who had "a substantial connection with the work force," H. R. Rep. No. 544, *supra*, at 17, and exclude families if the unemployed father "receives unemployment compensation under an unemployment compensation law of a State or of the United States." 81 Stat. 883. The Senate had preferred to retain the option giving*the States the discretion to deny AFDC benefits to families receiving unemployment compensation, S. Rep. No. 744, *supra*, at 28, but receded at conference, H. Conf. Rep. No. 1030, *supra*, at 57.

Congress also expressed its displeasure with the State practice which had made "families in which the father is working but the mother is unemployed eligible," H. R. Rep. No. 544, *supra*, at 108, and restricted the program to children of unemployed fathers.

⁷ In the next session the Senate tried again to modify the mandatory exclusion of § 407 (b). See n. 6, *supra*. Under the major modifications made at the beginning of 1968, a family that received unemployment compensation for any part of a month was automatically disqualified from AFDC assistance for the entire month. The Senate sought to restore to the States the option to permit or deny AFDC assistance to families in this situation, S. Rep. No. 1014, 90th Cong., 2d Sess., 9 (1968). A compromise was reached in Conference by which the mandatory exclusion was retained in concept but relaxed in application: a father receiving unemploy-

definition of "dependent child," § 407 (a) of the Act, applies only if participating States deny aid

"to families with dependent children to any child or relative specified in subsection (a) of this section—

"(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States." § 407 (b)(2)(C) (ii) of the Act, 42 U. S. C. § 607 (b)(2)(C)(ii).

To qualify for funding under this unemployed-father program, Vermont promulgated Welfare Regulation 2333.1, which provides in relevant part:

"An 'unemployed father' is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that

"(3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted."

Appellees are the parents and minor children of Vermont families whose ANFC assistance was terminated or whose applications for assistance were rejected because the fathers were receiving unemployment compensation; in each instance the amount of money received by the family in unemployment compensation was less than would have been received under the ANFC program. Appellees filed suit against Commissioner Philbrook and

ment compensation during any month would be denied AFDC assistance but only with respect to the weeks for which unemployment compensation was received. 82 Stat. 273. See H. Conf. Rep. No. 1533, 90th Cong., 2d Sess., 49 (1968).

Secretary Weinberger to enjoin the enforcement of the federal statute and state regulation. The three-judge court, concluding that it had jurisdiction over the parties by virtue of 28 U. S. C. § 1343 (3), concluded "from the language of the statute that the disqualifying factor is actual payment, rather than the mere eligibility for unemployment compensation." 368 F. Supp., at 217. Under this construction of § 407 (b) (2) (C) (ii) of the Act, 42 U. S. C. § 607 (b) (2) (C) (ii), a father who otherwise qualified had an option to receive either an unemployment compensation check or ANFC assistance, whichever was greater, and the Vermont regulation could not be applied so as to conflict with this construction of the federal statute. An injunction to this effect was entered, and both the state and federal parties have appealed.*

* At oral argument a question arose regarding the jurisdiction of this Court over the appeal, 28 U. S. C. § 1253, and the parties have filed supplemental briefs on this point. On authority of *Gonzalez v. Automatic Employees Credit Union*, 419 U. S. 90 (1974), and *MTM v. Bazley*, 420 U. S. — (1975), appellant Weinberger contends that any appeal from the District Court's judgment should have been taken to the Court of Appeals; appellant Philbrook and appellees contend that the appeals are properly before this Court.

In *Hagans v. Lavine*, 415 U. S. 528 (1974), this Court indicated that it was the preferred practice for a single judge, when presented with both statutory and constitutional grounds for decision, to resolve the statutory claim before convening a three-judge court. The District Court in this case was unable to proceed in that manner because appellees raised only constitutional contentions in their complaint, App. 10, and raised their statutory contention, for the first time, at oral argument before the three-judge court. Tr. of Oral Arg. before the United States District Court for the District of Vermont 42-44 (March 5, 1973). Appellant Weinberger urges us to reconsider our decision in *Engineers v. Chicago, R. I. & P. R. Co.*, 382 U. S. 423 (1966), in which we held that, if a three-judge court is convened and decides a case on statutory grounds, the judgment may be appealed to this Court under 28 U. S. C. § 1253, but we decline to do so.

II

The appellants do not contest, as indeed they could not, that § 407 (b)(2)(C)(ii) speaks in terms of a "father [who] receives unemployment compensation" rather than a "father [who] is eligible to receive unemployment compensation." They do contend, however, that the District Court's construction of that section is wholly at odds with the premise underlying the AFDC program and with the approach to non-AFDC resources dictated by § 402 (a)(7) of the Act, 42 U. S. C. § 602 (a)(7). "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *United States v. Heirs of Boisdore*, 8 How. 113, 122 (1850). *Richards v. United States*, 369 U. S. 1, 11 (1962); *Chemehuevi Tribe of Indians v. FPC*, — U. S. —, — (1975). Our objective in a case such as this is to ascertain the congressional intent and give effect to the legislative will. The language of § 407(b)(2)(C)(ii) certainly leans toward the construction adopted by the District Court, but "[i]t is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of of its makers." *Church of the Holy Trinity v. United States*, 143 U. S. 457, 459 (1892).

In order to qualify for federal assistance under the AFDC program, a state plan must "provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children." § 402 (a)(7) of the Act, 42 U. S. C. § 602 (a)(7). Further force to this statutory command has been applied by regulations requiring state agencies to "carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state

of availability." 45 CFR § 233.20 (a)(3)(ix). It flies in the face of this statutory scheme, argue appellants, to construe a provision of the same Title so as to permit a person to decline resources, for which he is eligible, in order to qualify for AFDC assistance. See *Shea v. Vialpando*, 416 U. S. 251 (1974). This anomaly is compounded by the violence done to the intended operation of unemployment compensation programs by the District Court's construction. Unemployment compensation programs, financed by employer contributions, are intended to operate without regard to need and be available to a recipient as a matter of right. See *California Department of Human Resources Development v. Java*, 402 U. S. 121 (1971). The appellants contend that AFDC should not be available when unemployment compensation, "the first line of defense," can be obtained.*

An argument based on intersectional harmony might have considerable force in other circumstances, but we find it unpersuasive as applied to appellants' case. Under § 402 (a)(7), an applicant's other income and resources are taken into account in determining the applicant's need. If the amount "is less than the predetermined statewide standard of need, the applicant is eligible for participation in the program and the amount of the assistance payments will be based upon that differ-

* Appellant Philbrook also argues that the District Court's construction operates "to shift drastically the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program." Brief for Appellant Philbrook, at 27. Such a shift from private sector to public sector financing distorts the intended relationship between the unemployment compensation and AFDC programs, and gives private employers a windfall gain since their financial obligation under the unemployment compensation program is a function of amounts paid out in claims. *Ibid.*